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STATEMENT

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Hyde, William B

Washington, June 30th, 1868.

To the Gentlemen of the House Public Land Committee :

The following on behalf of the Terminal Central Pacific Railway Company of California, is respectfully submitted :

STATEMENT.

The Terminal Central Pacific Railway Company was organized under the general Railroad law of the State of California, with the object of connecting Vallejo and the terminus there of the California Pacific Railroad, with San Francisco by the shortest possible rail and ferry communication. By the located line of the road that connection embracing the ferriages opposite San Francisco and across the Straits of Carquinez is found to be 25.5 miles, which added to the 59.75 miles length of road of the California Pacific Company will make the connections with Sacramento 85.25 miles in length.

Yerba Buena or Goat Island was the point selected in the location of road of the Terminal Central Pacific Railway as the site for depots; but by a Report of the U. S. Engineers relating to the commercial occupation of that Island, recommendation was made that the whole Island be retained for military purposes, and the representatives of the Company immediately secured from the State of California a grant of 150 acres of the shoals north of the Island for their depot purposes, and now ask of Congress permission to take such material from the Island as may be relinquished by the War Department for the purpose of filling upon and reclaiming that shoal property.

The objections that have been urged are as follows :

1. That the United States may need the shoals as part of the Island defences.

2. That the Terminal Central Pacific Railway Co. have not yet built any road, and that the desire to obtain this privilege—appears of a speculative character.

3. That the Company intend a species of black mailing operations against the Western Pacific Railroad Company, and that the cession

to the T. C. P. R. W. Co. of this privilege to go upon and take from the Island rock material, will interfere with the legitimate design of said Western Pacific Railroad Company.

1. It is respectfully submitted that the whole question of rights of the Company holding those shoals depends upon the respective powers and legal rights of the State and National Governments. By reference to the following Supreme Court decisions in 15 Peters, pp. 407,—9 Howard, p. 471,—9 Wheaton, p. 203,—7 Howard, p. 185,—16 Peters, p. 234,—and particularly 3 Howard, p. 212, *Pollards lessee vs. Hagan*,—it will be seen that the right of the State to jurisdiction over the submerged lands within her borders is definitely settled. The right of disposal existing, carries with it the right to erect such structures as the owners may choose, but in time of war or threatened war, the United States can appropriate to its use said structures or property. The right of condemnation of private property over which the United States has had no prior title, for war or defensive purposes, *in time of peace*, is not yet accorded the National Government. Such a process would naturally be by the advice founded upon the mere opinion of the officers of the Army, and the commercial necessities and property of the citizens of the United States, have not yet been made subservient to any such opinions, but only in time of actual war or danger of war does the popular voice justify the Executive in taking possession of private property for National defensive purposes. While holding this war power over the shoals in question, the United States can have no legal voice in their disposal, occupation or uses during time of peace.

The Company, in asking for this material from the Island, ask it as rendering them indirectly so much financial aid; should they fail in receiving this concession, it would not interfere with the projected occupation of the shoals, but would force them to incur a million dollars extra expense in their improvement. Financially, too, it is to the benefit of the United States that the concession asked with the accompanying restrictions, should be granted. Yerba Buena Island is an unimproved mountain, without battery, earth-works, or guns, of 116 acres area and with its ridge 342 feet above high water. By reference to the frequent and heavy appropriations for harbor defences of San Francisco, it will be seen that to make this Island in any way effective, there is inevitably necessary a large amount

of costly excavation and work. The Company, by the provisions of the bill pending, ask permission to reduce the height of said Island, to terrace its slopes, to scarp its sides and bluffs, or in any other way—that is the plan of the Chief Engineer—do the work of preparing the Island for proper defensive uses in which material is to be excavated and removed. To remove that rock will cost either the Company or the United States at least 75 cents per yard cubic, and the Company need for their purposes about two and a half millions cubic yards. The provisions of the bill permit them to take this amount or *less* should the Engineer's plans so dictate, but should the plans for the defensive improvement of that Island develop the fact that the removal of that amount of material would increase its value, then its removal by the Company will be \$1,875,000, value to the United States, and *whatever* amount is required to be moved, will be of proportional value.

On the other hand, while rendering a financial as well as military service to the United States, the company save by the permission to take rock from a half mile distance from its site for depots, all that would otherwise be expended in building an expensive piling across the water, their main bridge being in constant commercial use, and hauling their rock from a distance of six miles, with all of the extra contractors plant, and necessary wear and tear of that plant. The State's right to the disposal of submerged lands being established by frequent decisions of the Supreme Court, and that right being exercised in transferring to the Terminal Central Pacific Railway Company proprietorship over 150 acres of shoals north of Yerba Buena Island, it is respectfully submitted that the United States has no legal ground of objection to the occupation and use of said shoals for commercial purposes; and further, that it can have no substantial military ground of objection, as the shoals are such that no enemy's vessel can ride over them, and the heights of commercial structures and buildings will be so much lower than the redoubts on the crest of the Island, that all of the surrounding bay can be effectively reached by the guns.

2. The second objection, that the company has not yet built any road, is in the face of the history of all Western Railroad progress rather unjust and invidious. Railroads in California have to be built from eastern or foreign capital, secured by bonds

and mortgage of company franchises and stock. In asking this capital to invest, any well managed project must show that every precaution has been taken to secure the most economical investment of the funds furnished, in order to preserve the legitimate value of the company's bonds. In the subsidized roads there is no guarantee required except that there shall be built certain accepted lengths of road upon which the bonds and lands are issued. None of the Government roads struck pick in the ground until it was definitively settled that the United States should, certain conditions being fulfilled, transfer values to the company upon such liberal terms as to partake almost of the character of a free gift. The Central Pacific of California, the Western Pacific of California, the Union Pacific, all *waited* until Congress *guaranteed* them the funds with which to build their roads; it is respectfully submitted whether the size of the Corporation alters the principle involved! But the required guarantee that this Terminal Central Pacific Railway Company will fulfill its agreement with the State and the United States is of a stringent character, not equalled by any of the larger and more favored recipients of Government bounty. The company, before being allowed to *commence* work, must give to the State a bond for \$250,000 that it will accomplish the improvement of those shoals and the building of the road.

It must expend within a year at least \$100,000 on the shoal improvement alone, and finally must within four years have built and put in running order its entire road: *after* this shall be done the company receive their patent for the shoal property. To make the first working connection between San Francisco and Vallejo will cost the company \$2,000,000, which *must be expended* before they obtain title to the very ground upon which it is fixed this material from the Island is to be used. Is there any enterprise in the United States that is forced to give such a practical guarantee that it intends to make bona fide use of its granted privileges? It is true that the company have not built any road, but against great opposition they are striving to place the project upon such a footing that capital may safely be asked to invest and build the road? The company are seeking for a natural and favorable birth into the world of finance; the opposition would make it a profitless abortion instead.

Is it speculative? No amount of restrictions can prevent par-

ties from transferring their individual rights one to another, but as a company, the privileges from the State are acquired, and as a company, must the recipients fulfill their obligations. The shoals cannot be patented until the Terminal Central Pacific Railway Company, whoever may be its members, has completed its road. The public and State receive their full benefits as agreed upon, and hence by the very terms upon which the State grant is made, it is impossible that the movement should be speculative, and that the individuals engaged shall be made rich and the State and community made poor.

3. The most ungenerous as well as the most illogical and groundless opposition is from the representatives of the Western Pacific or Central Pacific Railroad Company of California. Although aware of the enormous disparity in the forces engaged in a dispute with the greatest prospective corporation in the United States, there is a principle to be fought for which commands the earnest efforts of every opponent of monopoly and extortion, whether he represent a greater or smaller interest—a principle in which every friend of a great Northern Railroad, and an equally important and great Southern Railroad, should join hands to sustain; effort must be made to *force* the dog to come *from* the manger, and permit other new and worthy enterprises to at least have an unprejudiced opportunity to seek Government aid.

It is respectfully submitted, whether there can be any black mail in a project that has not the *location* to *extort* from the Western Pacific Railroad Company.

The route of that Western Pacific Railroad is to San Jose, but by private arrangements, the Company have received several hundred acres of shoal ground in front of the city of Oakland, and running out to ship channel, for a terminus, and has also received from the State of California thirty acres in the city of San Francisco, also for a terminus. The Company to reach these two termini, will have to build branches from their present legal and subsidized road. But these branches will be in entirely different directions from the route of the Terminal Central Pacific Railway—and unless the owners of that Western Pacific Company are prepared to admit that they have used the wealth conferred upon their road by the United States for the purpose of pushing it *ahead*, in buying up and absorbing local enterprises, they cannot even claim that

the Terminal Road or connections will *compete* with them. This Western Pacific Company having such an abundant area on both sides of the Bay of San Francisco, granted them for the express purpose of making termini, it is fair to presume, that the Congress of the United States will not grant them Yerba Buena Island as the third and only remaining terminal site, or at least, not the monopoly of that Island, and inasmuch as the Company have neither possessory or prospective title there to the detriment of other roads, the question of interference has not even the foundation for discussion. The Terminal Central Pacific Railway Company respectfully pray that the concession asked for be granted, and that they be thus enabled to go before the financial world with the sure guarantee that the material for the reclamation of the shoals shall be obtained at the minimum expenditure.

WM. B. HYDE,

*Chief Engineer and Representative Terminal Central Pacific
Railway Company.*



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